IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1834 OF 2007

Mr.Akshay Pravin Kalawar .. Petitioner.

V/s.

The Management Council, University of Mumbai and others. .. Respondents.

Mr.P.K.Rele, Sr.Advocate with Vinod Tayade and R.D.Oak for the Petitioner.

Mr.R.A.Rodriques for the Respondent Nos. 1 and 2.

Ms. Nandini Memon for the Respondent No.3.

CORAM : F.I. REBELLO AND R.M. SAVANT, JJ.

DATED : 04th APRIL, 2007.

P.C.:

. Rule. Heard forthwith.

2. By the order dated 3rd of January, 2007 the Respondent No.3 College was informed by the Respondent No.2 that the Respondent No.1, on a consideration of the case of the petitioner for condonation of deficit attendance, has not accepted the recommendation of the College in view of the provisions made in the relevant Ordinance in that behalf. The Ordinance 119 sets out the minimum attendance necessary for keeping terms.

Ordinance 120, confers the power on the Management Council of the University to condone the deficiency.

3. In the instant case, the petitioner is a student of the four year degree course in engineering in the Electronics and Telecommunication stream. He was declared unsuccessful in Applied Mathematics-IV. On 13.07.2006 he applied to the University through proper channel for revaluation of the answer book of the said subject. The results of the revaluation were communicated to the petitioner on 06th of November, 2006. The petitioner earlier approached this court by Writ Petition (A.S.) No. 7150 of 2006, seeking a direction that he should be permitted to take the examination which was to commence in the month of November, 2006. By the order dated 6th of November, 2006 that petition was disposed of. Pursuant to which, the petitioner was allowed to take the examination. This court while disposing of the writ petition No. 7150 of 2006, recorded a statement made on behalf of the respondents that the petitioner would be allowed to take the examination which is scheduled either on 14th or 20th November, 2006 and that an application may be filed by the petitioner before the Respondents for condonation of lecturers, if there has been a shortage thereof. The court observed that we permit the petitioner to file

such an application for condonation of lectures, which shall be allowed by the respondents inorder to enable the petitioner to take the examination. Certain other directions were also given. The court also observed that this arrangement has been made as a special case and will not create any equity in the petitioner.

4. When the application for condonation came up for consideration, the Respondent No.1, considering the Ordinances of the University, it appears, could not exercise discretion in favour of the petitioner and consequent thereto the present petition.

5. During the course of hearing, we had directed the Principal of Respondent No.3 to file an affidavit to find out whether the petitioner inspite of the fact that he had failed, was allowed to participate in the lecturers. In the affidavit filed, it has been pointed out that as the petitioner applied for revaluation, the petitioner was permitted to attend his Semester VII classes which had commenced on 17.07.2006, only purely as a humanitarian gesture. The effect of revaluation would be that the petitioner would have been deemed to have passed on the date of the first declaration and consequently, would have been entitled to keep terms.

6. In these circumstances, in our opinion, the Ordinance can be read on the facts of this case to consider attendance on all days when the petitioner was allowed to attend and attended the classes, which had commenced from 17.07.2006. Para-10 of the affidavit of the College would indicate that the petitioner had approximately 40-45% attendance at his Semester VII lecturers. We can understand the same, considering that the petitioner was awaiting the result of revaluation. The respondent No.1 has powers to condone the delay. Considering the earlier order of this court and the facts and circumstances of the case, in our opinion, and to avoid further delay the ends of justice would be met if we hold that the petitioner had an attendance of 40-45% and consequently, it was within the jurisdiction of the Respondent No.1 to condone the delay and in the special facts and circumstances, the delay is condoned and consequently, the communication dated 3rd January, 2007 is to be held null and void.

7. Consequential directions will have to be issued. In that light, the petition is made absolute in terms of prayer clause (b).

8. In passing, we may observe that what we have noted is that though the students apply for revaluation

on time on account of various factors, perhaps beyond the control of the University, it is not always possible to declare the results of the revaluation within a reasonable period. In such situation the University to consider to give some discretionary power to the principals of the affiliated colleges to grant provisional admission to students who have applied for revaluation and where the principal is of the opinion that such provisional admission can be granted to permit to do subject to the result of revaluation and without any equity in favour of such student.

9. With the above observation, the petition is disposed of. Rule is made absolute in terms what we have stated above.

(F.I.REBELLO,J.)

(R.M.SAVANT,J.)

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